Ligia Fashions, Inc. *and* Local 135, International Ladies' Garment Workers Union, AFL–CIO. Case 22–CA–19973

May 24, 1996

DECISION AND ORDER

BY MEMBERS BROWNING, COHEN, AND FOX

Upon a charge, first amended charge, and second amended charge filed by the Union on June 21, July 1, and August 18, 1994, the General Counsel of the National Labor Relations Board issued a complaint on February 27, 1996, against Ligia Fashions, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charges and complaint, the Respondent failed to file an answer.

On April 23, 1996, the General Counsel filed a Motion for Summary Judgment with the Board. On April 26, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted.[1]

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Newark, New Jersey, has been engaged in the manufacture of ladies' coats. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, sold and shipped from its Newark, New Jersey facility goods valued in excess of $50,000 directly to points outside the State of New Jersey. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About May 31, 1994, the Respondent promised employees a $1 raise and improved health insurance and pension benefits if employees rejected the Union and threatened employees with plant closing and loss of jobs if the employees continued to support the Union.

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All non-supervisory production, maintenance, packing, shipping, office and trucking workers employed by the Employer including regular and trial period workers.

For many years and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit, and the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from June 1, 1991, to May 31, 1994. At all times since 1991, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About January 1994, the Respondent bypassed the Union and dealt directly with its employees in the unit by directly discussing with employees a 10-percent wage reduction in return for employment during its slow season. About February to May 1994, the Respondent unilaterally implemented the 10-percent wage reduction. Thereafter, about June 1994, the Respondent ceased making contributions to the Union's welfare and pension funds.

These subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct.

About June 1, 1994, the Respondent withdrew its recognition of the Union as the exclusive collective-bargaining representative of the unit.

Since about June 15, 1994, the Union has requested that the Respondent furnish the Union with financial

[1] Although no further reminder or warning of the consequences of failing to file an answer was sent or given to the Respondent, this does not warrant denial of the motion. See, e.g., *Superior Industries*, 289 NLRB 834, 835 fn. 13 (1988).

books and records, which information is necessary and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. Since about June 15, 1994, the Respondent has failed and refused to furnish the Union with this requested information.

CONCLUSIONS OF LAW

1. By promising employees a raise and improved benefits and by threatening employees, the Respondent has interfered with, restrained, and coerced employees in the exercise of rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By bypassing the Union, unilaterally implementing a wage reduction and ceasing contributions to the welfare and pension funds, withdrawing recognition from the Union, and failing and refusing to provide the requested information, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by unilaterally reducing wage rates for unit employees, we shall order the Respondent to rescind the reduction in wage rates and to make the unit employees whole for any loss of earnings attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Furthermore, having found that the Respondent has violated Section 8(a)(5) and (1) by unilaterally ceasing contributions to the Union's welfare and pension funds, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.[2]

In addition, having found that the Respondent unilaterally withdrew recognition from the Union about June 1, 1994, we shall order the Respondent to recognize and bargain with the Union on request.

Finally, having found that the Respondent has failed to provide the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees, we shall order the Respondent to furnish the Union the financial books and records it requested about June 15, 1994.

ORDER

The National Labor Relations Board orders that the Respondent, Ligia Fashions, Inc., Newark, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promising employees raises or improved benefits if they reject Local 135, International Ladies' Garment Workers Union, AFL–CIO.

(b) Threatening employees with plant closure or loss of jobs if the employees continue to support the Union.

(c) Bypassing the Union and dealing directly with the unit employees.

(d) Unilaterally implementing changes in wage rates.

(e) Unilaterally ceasing contractually required contributions to the Union's welfare and pension funds.

(f) Withdrawing recognition of the Union as the exclusive collective-bargaining representative of the unit.

(g) Failing or refusing to furnish the Union with requested information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

(h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, recognize and bargain with the Union as the exclusive collective-bargaining agent of the following unit employees.

> All non-supervisory production, maintenance, packing, shipping, office and trucking workers employed by the Employer including regular and trial period workers.

(b) Rescind the unilateral reduction in wage rates and make the unit employees whole, with interest, for any loss of earnings in the manner set forth in the remedy section of this decision.

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[2] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

(c) Make whole the unit employees by making all contributions to the Union's welfare and pension funds due since about June 1994, including any additional amounts due the funds, and by reimbursing employees for any expenses attributable to its failure to make the contractually required contributions to the Union's welfare and pension funds since about June 1994, in the manner set forth in the remedy section of this decision.

(d) Furnish the Union the financial books and records it requested about June 15, 1994.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Newark, New Jersey, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 21, 1994.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 24, 1996

Margaret A. Browning, Member

Charles I. Cohen, Member

Sarah M. Fox, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT promise employees raises or improved benefits if they reject Local 135, International Ladies' Garment Workers Union, AFL–CIO.

WE WILL NOT threaten employees with plant closure or loss of jobs if the employees continue to support the Union.

WE WILL NOT bypass the Union and deal directly with the unit employees.

WE WILL NOT unilaterally implement changes in wage rates.

WE WILL NOT unilaterally cease making contractually required contributions to the Union's welfare and pension funds.

WE WILL NOT withdraw recognition from the Union as the exclusive collective-bargaining representative of the unit.

WE WILL NOT fail or refuse to furnish the Union with requested information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL, on request, recognize and bargain with the Union as the exclusive collective-bargaining agent of the following unit employees:

> All non-supervisory production, maintenance, packing, shipping, office and trucking workers employed by us including regular and trial period workers.

WE WILL rescind the unilateral reduction in wage rates and make the unit employees whole for any loss of earnings.

WE WILL make the unit employees whole by making all contributions to the Union's welfare and pension funds due since about June 1994, including any additional amounts due the funds, and by reimbursing employees for any expenses attributable to our failure to make the contractually required contributions to the Union's welfare and pension funds since about June 1994.

WE WILL furnish the Union the financial books and records it requested about June 15, 1994.

LIGIA FASHIONS, INC.